IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.936 OF 2005
IN
NOTICE OF MOTION NO.3144 OF 2005
IN
SUIT NO.2832 OF 2005

M/s.S & S Enterprise .. Appellant

v/s.

Mr.Hasmukh Shivlal Desai & anr. .. Respondents

Mr.P.A.Sawant i/by M/s.Khaitan & Jaykar for the appellant.

Mr.T.N.Tripathi for the respondents.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 19th November, 2005

P.C.

During the course of motion hearing, the learned counsel for the appellant submitted that the appellant (plaintiff) is not desirous of prosecuting the claim of the specific performance and that the claim is confined to refund of an amount of Rs.33,00,000/-.

2. The learned counsel for the defendants submitted before us that the defendants are ready and willing to refund the amount of Rs.33,00,000/- to the plaintiff. He, however, submitted that the amount can be paid by the defendants only by transferring the subject property viz. Flat No.41, 4th floor, Maker Tower "K", Cuffe Parade,

Mumbai. The aforesaid submissions were made by the learned counsel for the respondents-defendants after seeking instructions from respondent No.1 who is present in the court.

3. In the light of the submissions made before us, we dispose of the appeal by the following order:-

ORDER

(i) The defendants may transfer, dispose of, alienate or create any third party right or interest in the subject premises being Flat No.41, 4th Floor, Maker Tower "K", Cuffe Parade, Mumbai and deposit the proceeds or part thereof to the extent of Rs.33,00,000/- before this court.

(ii) Until the deposit of Rs.33,00,000/- by the respondents before this court, the transfer of the aforesaid premises shall not be completed nor possession thereof shall be handed over to the transferee.

(R.M.LODHA, J.)

(D.G. KARNIK, J.)